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November 29, 2017

VIA E-MAIL & U.S. MAIL

Trustees, Ohio Operating Engineers Pension Fund
c/o Brian C. Barch, In-house Counsel
1180 Dublin Road
PO Box 12009
Columbus, OH 43212-0009

RE: Sofco Erectors, Inc. – Supplemental Request for Review of Withdrawal Liability
Assessment dated August 31, 2017

To the Trustees:

This is a Supplement to the Request for Review submitted by Sofco Erectors, Inc. (“Company”) on November 10, 2017. In its Request for Review dated November 10, 2017, the Company disputed the Fund’s assessments in their entirety, based on 29 U.S.C. § 1383(b)(1) and 29 U.S.C. § 1388(d)(1). In this Supplement, the Company submits grounds for reducing the assessments if they are not overturned in their entirety.

I. THE FUND’S ACTUARY ERRONEOUSLY INCLUDED AMOUNTS FROM BEFORE APRIL 1, 2004 IN CALCULATING THE ASSESSMENT

The Company began operations on April 1, 2004, when it purchased the assets of its predecessor. Affidavit of John Hesford, attached as Exhibit 1 to Company’s Request for Review dated November 10, 2017. This was an arms-length transaction. Neither of the Company’s owners, John Hesford and Dan Powell, had any ownership in the predecessor Company or familial relationship with its owners. The previous owner of these assets was Southern Ohio Fabricators, Inc.; a list of its owners at time of purchase is attached as Exhibit 1.

Southern Ohio Fabricators, Inc. and its owners ceased operations entirely, and therefore had no withdrawal liability. 29 U.S.C. § 1383(b)(1). Accordingly, the Company began operations on April 1, 2004 with a clean slate as to the Fund.

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Despite the Company not operating before April 1, 2004 and the predecessor's exemption from withdrawal liability, the Fund's actuary included amounts from before that date in calculating the assessments. See Exhibits B, C, D, G, J, M, and Q, attached to the Segal Consulting letter dated August 29, 2017. When the liability allocation for Plan Year ending July 31, 2003 is excluded, and assuming withdrawal liability (which the Company disputes), the assessments would be as follows:

	<u>Assessed</u>	<u>Revised</u>
Partial – YE 7-31-11	\$344,627	\$ 48,907
Partial – YE 7-31-12	\$111,358	\$160,404
Partial – YE 7-31-13	\$0	\$0
Complete – YE 7-31-17	\$368,315	\$301,681
Total:	<u>\$824,300</u>	<u>\$510,992</u>

See summary prepared by Company's actuarial consultant, attached as Exhibit 2.

The removal of contributions preceding April 1, 2004 would likely further reduce the liability, but the Company's actuarial consultant did not have sufficient data to calculate the additional reduction. The Company requests that the Fund recalculate the Company's withdrawal liability by excluding pre-April 1, 2004 contributions made by Southern Ohio Fabricators, Inc., in addition to excluding (as above) the liability allocation for the Plan Year ending July 31, 2003.

II. THE FUND HAS NOT PROVIDED REQUESTED INFORMATION THAT MIGHT ALSO AFFECT THE CALCULATIONS

On November 15, 2017, counsel for the Company e-mailed the following requests for information to counsel for the Fund (attached as Exhibit 3):

- The withdrawal liability reports for 7/31/2008, 7/31/2009, and 7/31/2016, as referred to in the Exhibits E, K, and U attached to the Segal Consulting letter dated 8/29/2017.
- Why were the partial withdrawal calculations based on the withdrawal liability reports for 3 years before the partial withdrawal assessment?
- What interest rate was used to calculate the quarterly installments in each of the three assessments, and what is the basis for those rates?
- What is the payment start date for each of the three assessments?

None of the requested information has been provided. Accordingly, the Company reserves the right to raise issues related to the requested information in arbitration.



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III. CONCLUSION

For the reasons set forth in the Company's Request for Review dated November 10, 2017, the partial and complete withdrawal liability assessments should be overturned in their entirety. If the assessments are not overturned, then they should be recalculated and reduced by excluding the liability allocation for the Plan Year ending July 31, 2003 and all contributions made before April 1, 2004, as the Company did not operate before that date and is not a successor to the liability allocations and contributions of Southern Ohio Fabricators, Inc., which ceased operations on that date.

Respectfully submitted,

A handwritten signature in black ink that reads "Gary L. Greenberg". The signature is fluid and cursive, with the first name "Gary" and last name "Greenberg" clearly legible.

Gary L. Greenberg
Attorney for Sofco Erectors, Inc.

GLG/dlc
Enclosures

Cc: (Via email and U.S. Mail)
Daniel J. Clark
Alan Kinzer
Vorys, Sater, Seymour and Pease LLP
Outside Counsel for the Fund

**LIST OF SHAREHOLDERS OF
SOUTHERN OHIO FABRICATORS, INC.**

Names of Shareholders

Patricia Kling Ballman

Elizabeth Kling Mayotte

Christina Perry (Daughter of John Emerson Kling)

Josephine Kling Trippe

Susan Kling Worthington

Elizabeth Kling Mayotte, Susan Kling Worthington and
Margaret S. Kling, Co-Trustees, of the J.J. Kling Irrevocable
Trust FBO Christina Perry
With Life Estate for Margaret S. Kling

Elizabeth Kling Mayotte, Susan Kling Worthington and
Margaret S. Kling, Co-Trustees, of the J.J. Kling Irrevocable
Trust FBO Josephine Kling Trippe, Patricia Kling Ballman,
Elizabeth Kling Mayotte and Susan Kling Worthington
With Life Estate for Margaret S. Kling

Jerry T. Nickerson

Jerry T. Nickerson, Trustee, FBO Laurie A. Nickerson

Laurie A. Nickerson

Jennifer L. Nickerson

Anne Nickerson

Timothy J. Gates

Stephen R. Sundin

James W. Ludwig



**Ohio Operating Engineers Pension Fund
Withdrawal Liability Calculations
Sofco Erectors, Inc.**

DEMANDED WITHDRAWAL LIABILITY AMOUNTS

		Partial Withdrawal Liability 7/31/2011	Partial Withdrawal Liability 7/31/2012	Partial Withdrawal Liability 7/31/2013	Total Withdrawal Liability 7/31/2017	Totals
Original Calculation	¹	\$344,627	\$111,358	\$0	\$368,315	\$824,300
Revised Calculation	²	\$48,907	\$160,404	\$0	\$301,681	\$510,992
Change		<u>(\$295,720)</u>	<u>\$49,046</u>	<u>\$0</u>	<u>(\$66,634)</u>	<u>(\$313,308)</u>

¹ Calculations per Ohio Operating Engineers Fringe Benefit Programs Demand for Payment dated August 31, 2017.

² Revised Calculations reflect removal of Plan Year Ended July 31, 2003 from Liability. The removal of contributions preceding April 1, 2004 would also change the results, but we lack sufficient data to calculate the amount of such reduction.



Greenberg, Gary L. (Cincinnati)

From: Crawford, Denice L. (Cincinnati) on behalf of Mills, James A. (Cincinnati)
Sent: Wednesday, November 15, 2017 1:54 PM
To: djclark@vorys.com; askinzer@vorys.com
Cc: Greenberg, Gary L. (Cincinnati); Rosenthal, Daniel G. (Cincinnati)
Subject: Sofco Erectors, Inc.

Dear Mr. Clark and Mr. Kinzer,

My colleague, Gary Greenberg, is currently unavailable but asked to me to forward this request from the Company's actuarial consultant for a response from the Fund's actuary. The Company requests the following information:

- The withdrawal liability reports for 7/31/2008, 7/31/2009, and 7/31/2016, as referred to in the Exhibits E, K and U attached to the Segal Consulting letter dated 8/29/2017.
- Why were the partial withdrawal calculations based on the withdrawal liability reports for 3 years before the partial withdrawal assessment?
- What interest rate was used to calculate the quarterly installments in each of the three assessments, and what is the basis for those rates?
- What is the payment start date for each of the three assessments?

Jim Mills

James A. Mills

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